

United States District Court
Central District of California

NAWSHEEN DUFFAYDAR, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

SONDER HOLDINGS INC. et al.,

Defendants.

TAD PARK, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

SONDER HOLDINGS INC. et al.,

Defendants.

Case № 2:24-cv-02952-ODW (JCx)
[c/w: 2:24-cv-04798-ODW (JCx)]

**ORDER CONSOLIDATING
ACTIONS, AND APPOINTING
LEAD PLAINTIFF AND CLASS
COUNSEL [20, 24, 28]**

1 **I. INTRODUCTION**

2 Plaintiff Nawsheen Duffaydar brings this putative class action for securities
3 fraud under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 against
4 Defendants Sonder Holdings, Inc. (“Sonder Holdings”), Francis Davidson, Chris
5 Berry, and Dominique Bourgault (collectively, “Defendants”). (Compl., ECF No. 1.)
6 Movants Tad Park, Michael Paleski, and Ashley Walker each move to consolidate this
7 action with a parallel action filed by Park, and each seek appointment as lead plaintiff
8 with their respective counsel as lead counsel. (Notice Tad Park (“Park Notice”), ECF
9 No. 20; Notice Michael Paleski (“Paleski Notice”), ECF No. 24; Notice Ashley
10 Walker (“Walker Notice”), ECF No. 28.) The motions are fully briefed. (See Mot.
11 Tad Park (“Park Mot.”), ECF No. 21; Mot. Michael Paleski (“Paleski Mot.”), ECF
12 No. 25; Mot. Ashley Walker (“Walker Mot.”), ECF No. 29; Non-Opp’n (“Paleski
13 Non-Opp’n”), ECF No. 32; Opp’n Tad Park (“Park Opp’n”), ECF No. 33; Opp’n
14 Walker (“Walker Opp’n”), ECF No. 34; Reply Ashley Walker (“Walker Reply”), ECF
15 No. 35; Reply Tad Park (“Park Reply”), ECF No. 36.)

16 For the reasons discussed below, the Court **GRANTS** all movants’ Motions to
17 Consolidate, **GRANTS** Movant Park’s Motion for Appointment, and **DENIES**
18 Movants Paleski’s and Walker’s Motion for Appointment.¹

19 **II. BACKGROUND²**

20 Sonder Holdings is a publicly traded hospitality services company under the
21 ticker symbol “SOND” on the Nasdaq Global Market (“NASDAQ”). (Compl. ¶¶ 7–
22 8.) On March 16, 2023, Sonder Holdings filed its Form 10-K annual report for the
23 fiscal period ending on December 31, 2022 (“2022 Annual Report”). (*Id.* ¶ 17.)
24 Sonder Holding’s Chief Executive Officer Francis Davidson and Interim Chief
25 Financial Officer Chris Berry signed the 2022 Annual Report attesting to its accuracy.

26
27 ¹ After carefully considering the papers filed in connection with the Motions, the Court deemed the
28 matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

² The facts are drawn from Plaintiff’s Complaint and the Court accepts as true for this motion all
well-pleaded allegations. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

1 (*Id.* ¶¶ 9–10, 17.) Thereafter, Sonder Holdings filed Form 10-Q quarterly reports
2 (“Quarterly Reports”) covering the first three quarters of fiscal year 2023. (*Id.* ¶¶ 21,
3 25, 29.) Davidson and Sonder Holding’s new Chief Financial Officer Dominique
4 Bourgault signed and attested to the accuracy of the Quarterly Reports. (*Id.* ¶¶ 11, 21,
5 25, 29.)

6 Despite the attestations, Sonder Holdings made false and misleading statements
7 in its 2022 Annual Report and Quarterly Reports by failing to disclose all issues
8 related to internal controls and material errors in the valuation and impairment of
9 operating right of use (“ROU”) assets. (*Id.* ¶ 32.) On March 14, 2024, Sonder
10 Holdings issued a Form 8-K press release stating its “audited financial statement for
11 the 2022 Annual Report and the unaudited consolidated financial statements in
12 2023 . . . should no longer be relied upon due to accounting errors related to the
13 valuation and impairment of operating lease ROU assets and related items.” (*Id.*) Its
14 stock price subsequently dropped “38.2%, to close at \$3.40 per share on March 18,
15 2024, damaging investors.” (*Id.* ¶ 35.)

16 Duffaydar is a shareholder of Sonder Holdings. (*Id.* ¶ 6.) On April 11, 2024,
17 Duffaydar filed this putative class action asserting securities violations against Sonder
18 Holdings with the class period defined as March 16, 2023, through March 15, 2024
19 (“Original Class Period”). (*Id.* ¶¶ 1, 6.) On June 7, 2024, Park filed his own class
20 action suit against Sonder Holdings (“Park Case”) with an extended class period from
21 May 11, 2022, to March 15, 2024 (“Longer Class Period”). Compl., *Park v. Sonder*
22 *Holdings Inc.*, No. 2:24-cv-04798-ODW (JCx) (C.D. Cal. filed June 7, 2024), ECF
23 No. 1 (“Park Compl.”).

24 Tad Park, Michael Paleski, and Ashley Walker—each a shareholder of Sonder
25 Holdings—now separately move to consolidate the Park Case with this action, to be
26 appointed as lead plaintiff, and to have their attorneys appointed as lead counsel.

III. MOTION TO CONSOLIDATE

In a securities class action, courts must first decide on the motion to consolidate before turning to the appointment of lead plaintiff. *See* 15 U.S.C. § 78u-4(a)(3)(B)(ii). A district court has broad discretion to consolidate cases that involve a common question of law or fact. Fed. R. Civ. P. 42(a)(2); *Inv’rs Rsch. Co. v. U.S. Dist. Ct. for the Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). “To determine whether to consolidate, a court weighs the interest of judicial convenience against the potential for delay, confusion and prejudice caused by consolidation.” *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 807 (N.D. Cal. 1989).

In this case, Park, Paleski, and Walker each seek to consolidate the Park Case with this action. All movants agree that the two cases involve the same questions of law and fact such that consolidation would promote judicial economy. (Park Mot. 4; Paleski Mot. 8–9; Walker Mot. 9–10.) The Court likewise finds the two cases assert identical securities fraud claims arising from the same alleged misrepresentations in Sonder Holding’s financial reporting, differing only as to the alleged class period. However, “differing class periods alone will not defeat consolidation.” *Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1133 (C.D. Cal. 1999). Accordingly, the Court **GRANTS** the Motions to Consolidate.

IV. MOTION TO APPOINT LEAD PLAINTIFF AND LEAD COUNSEL

All movants timely filed Motions for Appointment within 60 days of the published notice. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). With timeliness not at issue, the lead plaintiff analysis requires determining whether Park, Paleski, or Walker has the largest financial interest to be presumed the most adequate plaintiff and whether any challenging movant can rebut the presumption. *Id.* § 78u-4(a)(3)(B)(iii).

A. Legal Standard

The Private Securities Litigation Reform Act of 1995 (the “PSLRA”) provides the process for appointing the lead plaintiff in a securities class action. *See* 15 U.S.C. § 78u-4(a)(3)(B). Any member of the purported class may move to serve as lead

1 plaintiff within 60 days after notice of action is published. *Id.* § 78u-4(a)(3)(A)(i)(II).
2 The court must appoint as lead plaintiff the member “most capable of adequately
3 representing the interests of class members.” *Id.* § 78u-4(a)(3)(B)(i). There is a
4 rebuttable presumption that the movant who (1) files the complaint or made a motion
5 in response to the notice of action; (2) holds “the largest financial interest in the relief
6 sought by the class”; and (3) otherwise satisfies the requirements of Rule 23(a), “in
7 particular those of ‘typicality’ and ‘adequacy,’” is the “most adequate plaintiff.” *In re*
8 *Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002); *see* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).
9 A party may rebut the presumption by showing that the presumed most adequate
10 plaintiff “will not fairly and adequately protect the interests of the class” or “is subject
11 to unique defenses that render such plaintiff incapable of adequately representing the
12 class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Once selected, the lead plaintiff “shall,
13 subject to the approval of the court, select and retain counsel to represent the class.”
14 *Id.* § 78u-4(a)(3)(B)(v).

15 **B. Discussion**

16 At the outset, Paleski concedes that he does not have the largest financial
17 interest. (Paleski Non-Opp’n 2.) The Court thus **DENIES** Paleski’s Motion for
18 Appointment and turns to Park’s and Walker’s motions. Park seeks to calculate the
19 financial interest using the Longer Class period. (Park Mot. 1.) If the Longer Class
20 Period applies, Park suffers the most financial loss in the amount of \$2,167,820.70.
21 (*Id.* at 6; Decl. Charles Linehan ISO Park Mot. (“Linehan Decl.”) Ex. C (“Park Loss
22 Chart”), ECF No. 22-3.) Walker opposes the Longer Class Period and instead applies
23 the Original Class Period, during which he suffered financial loss in the amount of
24 \$16,375. (Walker Opp’n 2, 5–6; Decl. Jennifer Pafiti ISO Walker Mot. (“Pafiti
25 Decl.”) Ex. A (“Walker Loss Chart”), ECF No. 30-1.) Walker also argues Park’s
26 former employment with Sonder Holdings renders him incapable of adequately
27 representing the class. (*See* Walker Reply 6–8.) Specifically, Walker claims Park’s
28 former employment “raises the appearance of a conflict of interest” and the

1 “possibility that Park was privy to insider information.” (*Id.* at 7 (internal quotation
2 marks omitted).)

3 The crux of this lead plaintiff analysis is whether the Original Class Period or
4 the Longer Class period should be used to determine the largest financial loss. The
5 Court finds that the Longer Class period applies such that Park is the presumed lead
6 plaintiff, and Walker fails to rebut the presumption.

7 *I. Class Period*

8 “[C]ourts usually . . . use the most inclusive class period and select as lead
9 plaintiff the movant with the largest financial interest under that period.” *Hardy v.*
10 *MabVax Therapeutics Holdings*, No. 18-cv-01160-BAS-NLS, 2018 WL 4252345,
11 at *4 (S.D. Cal. Sept. 6, 2018) (citing *Plumbers & Pipefitters Loc. 562 Pension Fund*
12 *v. MGIC Inv. Corp.*, 256 F.R.D. 620, 624–25 (E.D. Wis. 2009)); *see also Miami*
13 *Police Relief & Pension Fund v. Fusion-io, Inc.* No. 13-cv-05368-LHK, 2014 WL
14 2604991, at *1 n.3 (N.D. Cal. June 10, 2014) (“For purposes of appointing a lead
15 plaintiff, the longest class period governs.”); *Kangas v. Illumina Inc.*, No. 23cv2082-
16 LL-MMP, 2024 WL 1587463, at *3 (S.D. Cal. Apr. 11, 2024) (“[Plaintiff’s] request to
17 apply the shorter class periods is contrary to the general practice.”). The class period
18 determination at this stage is “generally not considered binding on later stages of a
19 private securities litigation case.” *Hardy*, 2018 WL 4252345, at *5. Courts can deter
20 bad faith extensions of the class period by determining whether the allegations that
21 support the longer class period are frivolous. *Id.* at *5.

22 Here, the Longer Class Period is proper and not frivolous. The Longer Class
23 Period begins on May 11, 2022, which is the date Sonder Holdings issued a
24 shareholder letter claiming its ROU assets calculation adopted a “new leasing
25 accounting standard.” (Park Reply 2–3.) These statements are relevant to Sonder
26 Holding’s later announcement about “accounting errors related to the valuation and
27 impairment of operating lease right of use (‘ROU’) assets and related items.” (Compl.
28

¶¶ 32–33.) Therefore, the Court declines to depart from general practice and adopts the longer, more inclusive class period in its lead plaintiff analysis.³

2. *Financial Interest*

The movant with the largest financial interest during the Longer Class period is presumed the most adequate plaintiff. The PSLRA does not provide a formula to calculate the “largest financial interest in the relief sought by the class,” and the Ninth Circuit has left it to the district courts to “select accounting methods that are both rational and consistently applied” in making this determination. *In re Cavanaugh*, 306 F.3d at 730, n.4. This Court and other district courts have applied “the ‘Olsten-Lax’ factors to determine who has the largest financial interest: ‘(1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered.’” *Knox v. Yingli Green Energy Holding Co. Ltd.*, 136 F. Supp. 3d 1159, 1165 (C.D. Cal. 2015) (quoting *Richardson v. TVIA, Inc.*, No. C 06 06304 RMW, 2007 WL 1129344, at *3 (N.D. Cal. Apr. 16, 2007)) (collecting cases). Courts consider the fourth factor the “most determinative in identifying the plaintiff with the largest financial loss.” *Richardson*, 2007 WL 1129344, at *4; *see also Tanne v. Autobytel, Inc.*, 226 F.R.D. 649, 666 (C.D. Cal. 2005) (finding the movant who suffered the most financial loss to have the largest financial stake in the litigation).

Here, the four factors weigh in Park’s favor. Using the Longer Class Period, Park purchased 86,945 gross shares and 53,833 net shares, expended \$2,246,664, and lost \$2,167,821. (Park Opp’n 6.) Walker provides no calculations using the Longer Class Period. Rather, Walker applies the Original Class Period and reports that he

³ The Courts’ adoption of the longer class period does not require republication of the notice of action. As long as the complaints “are substantially the same,” the PSLRA requires only one notice at the beginning of litigation. 15 U.S.C. § 78u-4(a)(3)(A)(ii). “In general, republication is not required where a complaint expands the class period.” *Thomas v. Magnachip Semiconductor Corp.*, No 14-cv-01160-JST, 2015 WL 3749784, at *4 (N.D. Cal. June 15, 2025).

1 purchased 30,986 shares, retained 1,549 shares, expended \$22,240, and lost \$16,357.
2 (Walker Mot. 12.) Because the Court finds using the longer, more inclusive class
3 period is appropriate, Park has demonstrated the largest financial interest in the relief
4 sought.

5 3. *Typicality and Adequacy Under Rule 23*

6 Having established that Park has the largest financial interest, attention turns to
7 Park's pleadings and declarations to determine if he satisfies the requirements of
8 typicality and adequacy under Rule 23(a). *In re Cavanaugh*, 306 F.3d at 730. "A
9 wide-ranging analysis under Rule 23 is not appropriate [at the initial stages of the
10 litigation] and should be left for consideration on a motion for class certification."
11 *Takeda*, 67 F. Supp. 2d at 1136 (alteration in original). The movant with the largest
12 financial interest that makes a prima facie showing of typicality and adequacy
13 becomes the presumed most adequate plaintiff. *In re Cavanaugh*, 306 F.3d at 730.

14 The typicality inquiry assesses "whether other members have the same or
15 similar injury, whether the action is based on conduct which is not unique to the
16 named plaintiff, and whether other class members have been injured by the same
17 course of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).
18 "Adequacy, for purposes of the lead plaintiff determination, is contingent upon both
19 the existence of common interests between the proposed lead plaintiffs and the class,
20 and a willingness on the part of the proposed lead plaintiff[s] to vigorously prosecute
21 the action." *Ferrari v. Gisch*, 225 F.R.D. 599, 607 (C.D. Cal. 2004) (alteration in
22 original). A moving lead plaintiff meets this requirement "if there are no conflicts
23 between the representative and class interests and the representative's attorneys are
24 qualified, experienced, and generally able to conduct the litigation." *Richardson*,
25 2007 WL 1129344, at *4.

26 Like all other class members, Park purchased Sonder Holdings shares during
27 the purported class period. Park Compl. ¶11, *Park Case*. The extended class period
28 does not preclude a finding of typicality and adequacy. *See e.g. Takeda* 67 F. Supp.

1 2d at 1137 (“The slightly different class period alleged . . . does not preclude a finding
2 of typicality); *Hardy*, 2018 WL 4252345, at *5 (finding the movant satisfied typicality
3 and adequacy after applying the longer alleged class period); *Ali v. Intel Corp.*,
4 No. 18-cv-00507-YGR, 2018 WL 2412111, at * (N.D. Cal. May 29, 2018) (finding a
5 prima facie showing of typicality and adequacy despite different alleged class
6 periods). Park’s claims—that Sonder Holding’s false and misleading statements on its
7 financial statements violated securities law—arise from the same course of conduct
8 and legal theory as the class. The uncontested Motions to Consolidate further support
9 that Park’s claims are similar and thus, typical, to the class. (*See generally* Park
10 Mot. 4; Paleski Mot. 8–9; Walker Mot. 9–10.) Park suffered the largest financial
11 harm and is “incentive[ized] to ensure vigorous advocacy.” (Park Mot. 8.) No
12 evidence suggests that he has conflicts with or interests antagonistic to other members
13 of the class, and he has retained competent and experienced counsel. (*Id.* at 8–9.)
14 Based on the pleadings and declarations, the Court finds that Park makes a prima facie
15 showing of typicality and adequacy.

16 4. *Rebuttable Presumption*

17 Having satisfied all requirements, Park is presumed the most adequate plaintiff.
18 A potential class member can rebut the presumption by providing proof that the
19 presumed lead plaintiff “will not fairly and adequately protect the interests of the
20 class” or “is subject to unique defenses that render such plaintiff incapable of
21 adequately representing the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II); *see In re*
22 *Cavanaugh*, 306 F.3d at 730 (“At the third stage, the process turns adversarial and
23 other plaintiffs may present evidence that disputes the lead plaintiff’s prima facie
24 showing of typicality and adequacy.”). Assertions based on speculation alone will fail
25 to rebut the lead plaintiff presumption. *Armour v. Network Assoc., Inc.*, 171 F. Supp.
26 2d. 1044, 1054 (N.D. Cal. 2001) (finding plaintiff’s rebuttal arguments failed because
27 they were based on pure speculation).

28 Here, Walker fails to adequately rebut the presumption because he relies on

1 unsupported allegations. Walker speculates that Park’s past employment with Sonder
2 Holdings as a software engineer from July 2017 and March 2020 “raises the
3 appearance of a conflict of interest” and possibly made Park “privy to insider
4 information.” (Walker Opp’n 11; Walker Reply 6–8.) Park disputes this and
5 represents that (1) he did not have access to non-public information and (2) his role as
6 a former software engineer has no plausible connection with Sonder Holding’s later
7 accounting misrepresentations, made two years after he left the company. (Park
8 Reply 6.) Walker provides no additional evidence or facts to support his allegations
9 and his speculations alone, without “proof,” are insufficient to rebut the presumption.
10 *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II). Accordingly, the presumption stands, and the
11 Court appoints Park as lead plaintiff in this matter.

12 **C. Lead Counsel**

13 Once a lead plaintiff is selected, that plaintiff “shall, subject to the approval of
14 the court, select and retain counsel to represent the class.” 15 U.S.C.
15 § 78u-4(a)(3)(B)(v). Park has selected Glancy Prongay & Murray LLP to represent
16 him and the class. Having reviewed the firm’s resume, the Court is satisfied that the
17 firm will effectively represent the interests of the class and finds no conflicts in this
18 record. No party has challenged the adequacy of this firm to serve as lead counsel.
19 Therefore, the Court approves Glancy Prongay & Murray LLP as lead counsel.

20 **V. CONCLUSION**

21 For the reasons discussed above, the Court **GRANTS** the Motions to
22 Consolidate, **GRANTS** Park’s Motion for Appointment, and **DENIES** Paleski’s and
23 Walker’s Motions for Appointment. (ECF Nos. 20, 24, 28.)

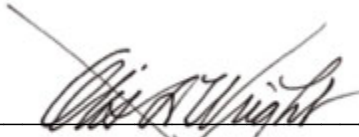
24 It is hereby **ORDERED** that this case is consolidated with *Tad Park v. Sonder*
25 *Holdings Inc. et al.*, No. 2:24-cv-04798-ODW (JCx), for all purposes including trial.
26 *Duffaydar v. Sonder Holdings Inc. et al.*, No. 2:24-cv-02952-ODW (JCx) is
27 designated as the lead case. All documents related to either case should be filed in
28 **only the lead case**. The caption page of all such documents filed with the Court in

1 this lead case shall be identical in form as the caption on this Order.

2 It is further **ORDERED** that Tad Park is designated as lead plaintiff in the
3 consolidated actions, and that Glancy Prongay & Murray LLP. is designated as lead
4 class counsel, subject to the Court's granting of a Motion for Class Certification.

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6 **IT IS SO ORDERED.**

7
8 October 9, 2024

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11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**
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